

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

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ORDER

- against -

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13 Cr. 280 (DC)
18 Civ. 2888 (DC)

MAXO JEAN,

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Defendant.

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CHIN, Circuit Judge:

Defendant Maxo Jean, proceeding *pro se*, moves for reconsideration of my October 3, 2018 decision denying his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. For the reasons set forth in my October 3, 2018 decision, his motion is DENIED. I add the following:

First, as discussed in my October 3, 2018 decision, Jean's motion was time-barred. Though Jean failed to meet the deadline by just a few days, he has failed to provide any explanation in his pending motion for why his filing was late. And although Jean is currently proceeding *pro se*, he had assistance of counsel when he let the statute of limitations lapse.

Second, Jean once again contends that his trial counsel Carlos Martir lied in an affirmation to the court as to whether he advised Jean with respect to certain issues in the

case. Based on my supervision of the case, including presiding over the trial, I accepted -- and still accept -- Martir's representations. Moreover, even if we assume, *arguendo*, that Martir's representation fell below an objective standard of reasonableness, *see Strickland v. Washington*, 466 U.S. 668, 688-89 (1984), Jean cannot show prejudice because he refused to accept a guilty plea when represented by prior counsel, Henry J. Steinglass, and he retained Martir to try the case. He has not shown that he would have pled guilty had Martir done anything differently. Moreover, as I previously noted, the evidence of his guilt was overwhelming.

Third, in his motion for reconsideration, Jean argues for the first time that Steinglass provided ineffective assistance of counsel. Because he did not raise this argument in his original motion, it has been waived.

Accordingly, Jean's motion for reconsideration is DENIED.

SO ORDERED.

Dated: New York, New York
January 23, 2020



DENNY CHIN
United States Circuit Judge
Sitting by Designation